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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN WAYNE BOTTEN, SR.;
TANJA DUDEK-BOTTEN;
ANNABELLE BOTTEN; and J.B., a
minor by and through his guardian
JONATHAN WAYNE BOTTEN, SR.,

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY
OF SAN BERNARDINO; ISAIAH
KEE; MICHAEL BLACWOOD;
BERNARDO RUBALCAVA;
ROBERT VACCARI; JAKE ADAMS;
and DOES 1-10 inclusive,

Defendants.

CASE NO. 5:23-cv-00257-KK-(SHKx)

*Assigned for All Purposes to:
Hon. Kenly Kiya Kato– Courtroom #3*

**COUNTY DEFENDANTS’
OBJECTIONS TO PLAINTIFF’S
ADDITIONAL MATERIAL FACTS
AND SUBMITTED DECLARATION
OF ROGER CLARK IN SUPPORT
OF COUNTY DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE SUMMARY
ADJUDICATION**

*[Concurrently Filed with County
Defendants’ Reply in Support of Motion
for Summary Judgment]*

Date: March 20, 2025
Time: 9:30 a.m.
Courtroom: 3

Trial: July 28, 2025

*Complaint filed: 02/16/23
FAC filed: 06/08/23*

**COUNTY DEFENDANTS’ OBJECTIONS TO PLAINTIFF’S ADDITIONAL
MATERIAL FACTS AND SUBMITTED DECLARATION OF ROGER
CLARK IN SUPPORT OF COUNTY DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT, OR IN THE ALTERNATIVE SUMMARY
ADJUDICATION**

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S LAUNDRY LIST OF
ADDITIONAL MATERIAL FACTS**

Material Objected to: Plaintiffs' Additional Undisputed Material Facts 132-352

Grounds for Objection:

Irrelevant FRE 402

Immaterial - *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) ("Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.")

It is undisputed by Plaintiffs that Adams and Vaccari did not cause the injuries to the Botten Plaintiffs, thus these facts are irrelevant. (County UMF 54, 57, 90, 91-94, 102-103, 109).

DEFENDANTS' OBJECTIONS TO DECLARATION OF ROGER CLARK

Material Objected to: Declaration of Roger Clark ¶11 and 20

Grounds for Objection:

Hearsay FRE 801 - *Courtney v. Canyon Television & Appliance Rental, Inc.*, 899 F.2d 845, 851 (9th Cir. 1990) (hearsay statements are not admissible to defeat summary judgment).

Improper Expert Opinion FRE 702- as to testimony of Roger A. Clark's speculative statements that any tactic caused or contributed to the Botten injuries as set forth in

1 these paragraphs. *In Re. Citric Acid Litigation*, 191 F. 3d 1090, 1102 (9th Cir. 1999)
2 (“[a]n expert report cannot be used to prove the existence of facts set forth therein.”);
3 *Dunbar-Kari v. United States*, 2010 WL 4923556 *4 (E.D. Cal., Nov. 29, 2010) (“An
4 expert’s speculations do not rise to the status of contradictory evidence, and a court is
5 not bound by expert opinion that is speculative or conjectural.”). By rule “an expert
6 witness cannot give an opinion as to [his] *legal conclusion*, which is effectively an
7 opinion on an ultimate issue of law.” *Hangarter v. Provident Life & Accident Ins.*
8 *Co.*, 373 F.3d 998, 1017 (9th Cir. 2004) (emphasis in original); *Monroe v. Griffin*,
9 2015 WL 5258115, at *6–7 (N.D. Cal. 2015) (preventing Roger Clark from testifying
10 on ultimate legal issues); *see also*, *Valtierra v. City of Los Angeles*, 99 F.Supp.3d
11 1190, 1198 (C.D. Cal. 2015) (preventing Roger Clark from testifying to ultimate
12 issues”).

13
14 Irrelevant FRE 402 and Immaterial as it is undisputed by Plaintiffs that Adams and
15 Vaccari did not cause the injuries to the Botten Plaintiffs, thus these conclusory
16 statements are irrelevant. (County UMF 54, 57, 90, 91-94, 102-103, 109) - *T.W. Elec.*
17 *Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987)
18 (“Disputes over irrelevant or unnecessary facts will not preclude a grant of summary
19 judgment.”)

20
21 **Material Objected to:** Declaration of Roger Clark ¶12-19

22 Improper Expert Opinion FRE 702- as to testimony of Roger A. Clark’s speculative
23 statements that any tactic caused or contributed to the shooting of Puga and/or the
24 Botten injuries as set forth in these paragraphs. *In Re. Citric Acid Litigation*, 191 F.
25 3d 1090, 1102 (9th Cir. 1999) (“[a]n expert report cannot be used to prove the
26

1 existence of facts set forth therein.”); *Dunbar-Kari v. United States*, 2010 WL
2 4923556 *4 (E.D. Cal., Nov. 29, 2010) (“An expert’s speculations do not rise to the
3 status of contradictory evidence, and a court is not bound by expert opinion that is
4 speculative or conjectural.”). By rule “an expert witness cannot give an opinion as to
5 [his] *legal conclusion*, which is effectively an opinion on an ultimate issue of law.”
6 *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1017 (9th Cir. 2004)
7 (emphasis in original); *Monroe v. Griffin*, 2015 WL 5258115, at *6–7 (N.D. Cal.
8 2015) (preventing Roger Clark from testifying on ultimate legal issues); *see also*,
9 *Valtierra v. City of Los Angeles*, 99 F.Supp.3d 1190, 1198 (C.D. Cal. 2015)
10 (preventing Roger Clark from testifying to ultimate issues”).

11
12 Irrelevant FRE 402 and Immaterial as it is undisputed by Plaintiffs that Adams and
13 Vaccari did not cause the injuries to the Botten Plaintiffs, thus these conclusory
14 statements on training and tactics are immaterial and irrelevant. (County UMF 54,
15 57, 90, 91-94, 102-103, 109) - *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*,
16 809 F.2d 626, 630 (9th Cir. 1987) (“Disputes over irrelevant or unnecessary facts will
17 not preclude a grant of summary judgment.”)

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19 DATED: March 5, 2025

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21
22 By: /s/ Shannon L. Gustafson
23 Shannon L. Gustafson
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